

## **SECTION 5.0**

**WHAT REGULATORY, PLANNING, AND POLICY ISSUES IMPACT  
THE CITY'S WASTE/RESOURCE MANAGEMENT?**

## **5.0 WHAT REGULATORY, PLANNING, AND POLICY ISSUES IMPACT THE CITY'S WASTE/RESOURCE MANAGEMENT?**

### **5.1 HOW DO KEY REGULATORY, PLANNING, AND POLICY ISSUES IMPACT THE CITY'S WASTE/RESOURCE MANAGEMENT PROGRAM?**

#### Key City Issues

The key regulations and policies that impact the City's waste management programs are the People's Ordinance, the City's recycling and C&D ordinances, the Miramar Ground Lease with the U.S. Department of the Navy, and the landfill gas agreement with Fortistar (previously Minnesota Methane).

The People's Ordinance requires the City to provide certain collection and disposal services without direct charge, resulting in severe burden to the General Fund. As discussed in Section 4.0, various fees collected at the Miramar Landfill fund many of the City's waste management programs.

A May 2008 San Diego Grand Jury report recommends that the City repeal the People's Ordinance because an "ordinance that provides free waste collection for some residents while others must pay for this service is fundamentally inequitable and cannot be justified as a policy that furthers the collective good." In addition, the primary reason the Grand Jury recommends repealing the ordinance is due to the financial burdens that the ordinance imposes on San Diego's General Fund.

The City's Recycling Ordinance and the Construction and Demolition Debris Diversion Deposit Program has the potential for conserving landfill capacity over time. However, the cost of implementing these programs will need to be fully evaluated in Phase II of the Strategic Plan.

The Miramar Ground Lease Agreement provides for the Navy to lease land to the City for the purpose of landfilling up to the year 2045. In exchange, the City agreed to: 1) provide a lump sum payment at lease execution, 2) provide free refuse disposal for Department of the Navy facilities, 3) compensate the Navy annually with production payments equal to 2 percent of the annual gross

revenues from the sale of energy generated for a total maximum cost, not to exceed of \$1.5 million.

The landfill gas agreement with Fortistar (previously Minnesota Methane) gives the landfill gas rights at the Miramar Landfills to Fortistar. This agreement needs to be examined in detail in Phase II to determine how and if the City would be able to pursue a reclamation and/or conversion technology project at the Miramar Landfills that would benefit the City.

### Key Regional Issues

AB 939 requires jurisdictions to plan for 15 years of landfill capacity. The City's only landfill, West Miramar is projected to close in 2012 under current conditions. The City has been working on a height increase for the West Miramar Landfill to increase capacity to approximately year 2016. However, additional capacity will still be needed to provide for 15 years of landfill capacity for the City. The City has agreements for waste disposal at Sycamore Landfill (after closure of the West Miramar Landfill) and is the lead agency for the environmental documentation needed for the Sycamore Landfill expansion.

The 2005 Countywide Siting Element prepared by the County of San Diego shows the Gregory Canyon Landfill as a proposed site and states that "the future opening date of the Gregory Canyon Landfill remains uncertain." As of today, that site is still not open. The Siting Element goes on to say that if neither the Sycamore nor the Gregory Canyon Landfill proposals are approved and without other strategies, the region may need to export up to 55 percent of its waste in 2017.

Proposition H has siting limits for a combustion technology which burns solid waste. The proposition states that solid waste facilities burning 500 tons or more per day of solid waste cannot be sited within three miles of a hospital, elementary school, child care center, or nursing home for the elderly; cannot increase existing levels of toxic air pollutants within the City; and cannot place additional demands on the treated water distribution systems within the City.

Lastly, all northern San Diego County waste currently being exported into the Orange County landfill system will need to be redirected in 2016 because the County of Orange will cease importing out-of-County waste in 2016.

## **5.2 WHAT WAS REVIEWED?**

Pertinent state, regional, and local regulatory and planning requirements and existing agreements that impact the City's management of solid waste were reviewed and included:

### State

- California Integrated Waste Management Act, 1989, AB 939; and

### Regional

- County of San Diego, Integrated Waste Management Plan, Countywide Siting Element; and

### Local

- Peoples Ordinance of 1919;
- Proposition H;
- Recycling Ordinance of 2008;
- Construction & Demolition Debris Diversion Deposit Program of 2008;
- City of San Diego Non-Disposal Facility Element (NDFE);
- Miramar Ground Lease between City of San Diego and U.S.A., Department of the Navy;
- Miramar Landfill General Development Plan (1993);
- Facilities Franchise Agreement with EDCO Recovery & Transfer Station;
- Facilities Franchise Agreement with San Diego Landfill Systems, Inc., for Sycamore Landfill;
- Non-Exclusive Solid Waste Collection Franchise Agreements; and the
- Fortistar's landfill gas agreement.

A brief summary of these documents is presented in Section 5.3. In addition, a more detailed discussion of the above documents is included in Appendix A of this report.

## **5.3 BRIEF SUMMARY OF KEY REGULATORY, PLANNING, AND POLICY ISSUES**

### **5.3.1 CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT (AB 939)**

The enactment of AB 939 resulted from a national crisis in landfill capacity and broad acceptance of the hierarchy (reduce, reuse, recycle, environmentally sound landfilling, and transformation) as the desired approach to solid waste management. The law required local jurisdictions to reduce their waste disposal (from a base year of 1990) by 25 percent by the year 1995 and 50 percent by the year 2000. As of 2006, the City's current diversion rate was 52 percent. AB 939 also established an integrated framework for program implementation, solid waste planning, and solid waste facility and landfill compliance.

### **5.3.2 COUNTY OF SAN DIEGO, INTEGRATED WASTE MANAGEMENT PLAN, COUNTYWIDE SUMMARY PLAN, AND COUNTYWIDE SITING ELEMENT (2005)**

The County established goals to guide regional management of solid waste as required by AB 939. The County of San Diego (County) Integrated Waste Management Plan (CIWMP) Countywide Summary Plan and Countywide Siting Element, 2005 Five-Year Revision, provides a regional perspective of the County's integrated waste management goals, policies, and provisions for 15 years of landfill disposal capacity. The Siting Element states that the opening of the Gregory Canyon Landfill remains uncertain because of opposition to the facility by concerned municipalities, agencies, and private parties. Additionally, the siting element states that the expansion of Sycamore Landfill is anticipated to occur in 2011, with an anticipated throughput of 12,000 tpd. The report states that if neither landfill proposal is approved without using other strategies, the region may need to export up to 55 percent of its waste by 2017.

### **5.3.3 PEOPLE'S ORDINANCE OF 1919**

In the early 1900's trash haulers charged relatively high prices for collection and then sold the garbage to hog farmers as a feed, making many customers believe that they were being cheated. Frequently, residents refused to pay for collection and instead dumped their waste on open space land and vacant lots. A local

newspaper reported in 1913, "A hundred policemen could not stop the surreptitious dumping of refuse while the motive for it remains. Householders take a walk in the evening with a nicely wrapped bundle of refuse under the arm and return without it....Until the contract system shall have been abandoned the otherwise beautiful canyons, the vacant lots, and the streets of the City will continue to be dumping grounds for the refuse of all kinds, to the detriment of the public health." This practice alarmed the Board of Health and tourist businesses.

In response to the illegal dumping problem, in 1919 the voters enacted "The People's Ordinance Regulating Collection and Disposal of Garbage," establishing that: "It shall be the duty of the Manager of Operations of the City of San Diego to gather, collect, and dispose of refuse and it shall be the duty of the Common Council of said City to levy and collect a sufficient tax each year for the purpose of paying the cost of the collection and disposal of said City refuse."

As a result of amendments made in 1981 and 1986, significant changes have been made to the People's Ordinance. The current ordinance specifies that the City Council regulates and controls the collection, transportation, and disposal of all refuse provided that:

- a) Residential Refuse shall be collected, transported, and disposed of by the City at least once each week and there shall be no City fee imposed or charged for this service by City forces;
- b) The City shall not collect Nonresidential Refuse, except that Nonresidential Refuse from a small business enterprise may be collected by City Forces if authorized by the City Council and limited to once a week service in an amount no greater than 150 percent of the refuse generated by an average City residential dwelling unit. There shall be no City fee imposed or charged for this service by City Forces;
- c) The City shall not enter upon any private property to collect any refuse except in the case of public emergency or pursuant to a hold harmless agreement in effect as of the date of adoption of this ordinance;
- d) Fees established by ordinance of the City Council for disposal of Nonresidential Refuse shall not exceed the full ascertainable cost to the City for such disposal.

A copy of the People's Ordinance of 1919, Chapter 6, Article 6, Division 7, Section 66.0127, of the City of San Diego Municipal Codes is included as Appendix A-1.

#### 5.3.4 PROPOSITION H (1987)

Proposition H, approved by the voters on November 3, 1987 (copy included in Appendix A-2), provides siting limits regarding the combustion or burning of solid waste. The measure states that solid waste facilities burning 500 tons or more per day of solid waste cannot be sited within three miles of a hospital, elementary school, child care center, or nursing home for the elderly; cannot increase existing levels of toxic air pollutants within the City; and cannot place additional demands on the treated water distribution systems within the City.

#### 5.3.5 CITY'S RECYCLING ORDINANCE

The City's Recycling Ordinance was approved by the City Council and signed by the Mayor on November 20, 2007. It became effective on January 1, 2008, with full implementation to be phased over a two-year period. This ordinance requires participation by commercial, single- and multi-family residential, and mixed-use facilities. The multi-family and commercial requirements are to be phased in over time, beginning with the largest facilities so as to provide ample time for smaller facilities to develop workable recycling programs. Also, any commercial, multi-family residential, or mixed-use facility which generates less than six cubic yards per week of refuse would be exempt from the ordinance, with the caveat that in the future, the Mayor could reduce the six cubic yard threshold after a 90-day public notice. A copy of the ordinance, Chapter 6, Article 6, Division 7, of the San Diego Municipal Code is included in Appendix A-3.

#### 5.3.6 CONSTRUCTION & DEMOLITION (C&D) DEBRIS DIVERSION DEPOSIT PROGRAM

Under the Construction and Demolition Debris Diversion Deposit Program, the City mandates the diversion of 50 to 75 percent of C&D debris from local landfills. The City will collect a refundable diversion deposit for specified building construction, demolition, or remodeling projects when a building permit or

demolition/removal permit is issued. The deposit amount will be based on square footage and type of project, with maximum deposits for larger projects. The deposit will be paid at the time the permit is issued. During the project's duration, the applicant will need to document the type and amount of C&D recycled. After final inspection of the project, the applicant has 180 days to submit documentation showing they met the required diversion requirement. If the diversion requirement is met, a refund will be approved. A copy of the ordinance, Chapter 6, Article 6, Division 7, of the San Diego Municipal Code is included in Appendix A-4.

#### 5.3.7 CITY OF SAN DIEGO NON-DISPOSAL FACILITY ELEMENT (2005)

The Sixth Amendment of the City of San Diego Non-Disposal Facility Element (NDFE) dated December 2005 was adopted by the San Diego City Council. The City's NDFE lists facilities that are or will be used to implement diversion programs in the Source Reduction and Recycling Element (SRRE). The City of San Diego's waste stream contains a significant portion of recyclable materials warranting concerted diversion efforts. Towards this end, several programs, facilities, and outreach efforts are identified in the NDFE.

#### 5.3.8 MIRAMAR GROUND LEASE BETWEEN CITY OF SAN DIEGO AND U.S. DEPARTMENT OF THE NAVY

The 50-year lease (August 17, 1995 to August 16, 2045) between the City and U.S. Department of the Navy encompasses an approximately 1,400-acre portion of the Naval Air Station, Miramar. The North Miramar Landfill is located on Parcel One, the West Miramar Landfill on Parcel Two, the Access area for the West Miramar Landfill on Parcel Three, and the South Miramar Landfill on Parcel Four. Any proposed changes to any of the Miramar Landfills requires the approval of the U.S. Department of the Navy. The Miramar Ground Lease Agreement provides for the Navy to lease land to the City for the purpose of landfilling up to the year 2045. In exchange, the City agreed to: 1) provide a lump sum payment at lease execution; 2) provide free refuse disposal for the U.S. Department of the Navy facilities; and 3) compensate the Navy annually with production payments equal to 2 percent of the annual gross revenues from

the sale of energy generated for a total maximum cost, not to exceed of \$1.5 million.

#### 5.3.9 MIRAMAR LANDFILL GENERAL DEVELOPMENT PLAN (1994)

The Miramar Landfill General Development Plan (GDP) dated September 1994 was prepared by City of San Diego, ESD. The GDP, a Comprehensive Master Plan, proposed modification, expansion, and siting of projects at the Miramar Landfill to meet mandates required by:

- AB 939 (recycling ),
- AB 2027 (measures to ensure the prevention of hazardous material from entering the landfill),
- California Coastal Commission order that the City to remove sludge-drying beds from Fiesta Island, and
- Consent Decree schedule with the U.S. Environmental Protection Agency and the State of California to remedy the City's non-compliance with the Federal Clean Water Act.

The GDP proposed modifying the easement with the U.S. Navy from 818 acres to approximately 1,424 acres; expanding, relocating, and modifying existing City-operated solid waste facilities; and siting new solid waste and sludge processing facilities using a phasing plan implemented over a ten-year period.

#### 5.3.10 FACILITIES FRANCHISE AGREEMENT WITH EDCO RECOVERY AND TRANSFER STATION

In 1999, the City granted EDCO a Facility Franchise for the EDCO Transfer Station. A First Amendment to the Facility Franchise Agreement was executed in May 2002 that included an increase in the daily tonnage to 1,500 tpd, and an annual tonnage capacity of 468,000 tons. This Agreement provides for transfer capacity for the City's waste.

5.3.11 FACILITIES FRANCHISE AGREEMENT WITH SAN DIEGO LANDFILL SYSTEMS, INC., FOR SYCAMORE LANDFILL

A Facility Franchise Agreement was executed between the City of San Diego and San Diego Landfill Systems, Inc. (SDLS) dated June 18, 1999. SDLS is the parent company of Sycamore Landfill, Inc., owner and operator of the Sycamore Landfill and the Otay Landfill, Inc., owner and operator of the South Bay Landfill commonly known as the Otay Landfill. The agreement provides for existing and future landfill capacity available to the City at the Sycamore Landfill through 2035 (the Guaranteed Acceptance Period) for City collected residential waste and from facilities owned or leased by the City (Qualified City Waste).

5.3.12 NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISE AGREEMENTS

AB 939 requires local agencies to make adequate provisions for solid waste handling. The City awards non-exclusive franchises to qualified companies for the collection and subsequent transfer, transportation, recycling, processing, and disposal of commercial, industrial, and certain residential solid waste. The City has a variety of solid waste collection firms under franchise to provide San Diego businesses with solid waste services at competitive prices.

5.3.13 FORTISTAR (FORMERLY MINNESOTA METHANE) AGREEMENT

Fortistar, who acquired the previous operator Minnesota Methane, has the rights to the landfill gas generated at the Miramar Landfills. The Miramar Landfills collectively have more than 200 extraction wells, 73,000 feet of piping, automatic condensate handling system, three blowers, two flares, and a gas-to-energy plant.

**5.4 WHAT ARE OTHER JURISDICTIONS PLANNING?**

5.4.1 COUNTY OF SAN DIEGO INTEGRATED WASTE MANAGEMENT TASK FORCE

The County of San Diego Integrated Waste Management Task Force (Local Task Force) was formed pursuant to Public Resources Code Section 40950 to assure

overall area-wide solid waste planning and coordination for the San Diego region. In San Diego County, SANDAG serves as the Local Task Force.

The Technical Advisory Committee (TAC) consists of the City Manager from each city within the County, and the Chief Administrative Officer, or their designees. This committee provides advice to the LTF on matters related to the Integrated Waste Management Act.

The Citizens Advisory Committee (CAC) is a second advisory committee to the Local Task Force and is comprised of public interest groups and industry representatives. The advisory committee's purpose is to advise SANDAG on the Siting Element, other CIWMP components, and other integrated waste management issues.

The CAC developed draft zero waste policies and drafted a zero waste resolution for adoption by the County. Those draft policies and resolution are currently under review by the County Planning Department for inclusion in the County's General Plan.

#### 5.4.2 COUNTY OF ORANGE – OC WASTE & RECYCLING

San Diego's neighboring county to the north, Orange County, which owns and operates all of the landfills in Orange County has been importing solid waste since 1995 to recover funds lost in their 1994 bankruptcy. Importation agreements will expire in 2016 and the County of Orange has indicated that they will not be renewing these contracts. Therefore, all of the waste from Northern San Diego County currently being exported to the Prima Deshecha Landfill (approximately 230,000 tons per year or 750 tpd) is expected to be redirected to San Diego's landfill system beginning in 2016. Currently, the City of Oceanside and five other cities in San Diego County (Santee, Vista, El Cajon, City of San Diego, and northern unincorporated San Diego County) dispose of their waste in Orange County.